NO. 98965-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF K.D.,

Minor Child.

AMICI CURIAE BRIEF OF WASHINGTON DEFENDER ASSOCIATION, NORTHWEST JUSTICE PROJECT, AMARA, AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, COLUMBIA LEGAL SERVICES, FRED T. KOREMATSU CENTER FOR LAW & EQUALITY, LEGAL COUNSEL FOR YOUTH & CHILDREN, AND TEAMCHILD FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

U.S. Supreme Court Cases

Washington State Supreme Court Cases

Other Cases

Statutes

Rules

Constitutional Provisions

Other Authorities

Policies

Session Laws

I. IDENTITY AND INTEREST OF AMICI CURIAE

The Washington Defender Association (WDA), the Northwest Justice Project (NJP), the American Civil Liberties Union of Washington (ACLU-WA), Amara, the Fred T. Korematsu Center for Law and Equality (Korematsu Center), Columbia Legal Services (CLS), Legal Counsel for Youth and Children, and TeamChild, are *amici curiae* in this matter. The identities and interests of each, filed under separate cover in the motion for leave to file brief of *amici curiae,* are incorporated herein by reference.

II. ISSUE TO BE ADDRESSED BY AMICI

Whether in this action to terminate parental rights, court rules, and open court principles allowed the Court of Appeals to unilaterally change the case title as used in the trial court to include the mother's name?

III. STATEMENT OF THE CASE

Amici adopts the facts as stated in the briefing and supplemental briefing of the Petitioner and Respondent.

IV. ARGUMENT

A. Introduction

Families experiencing dependency and termination of parental rights proceedings[1] struggle with many challenges. As a result, the records in these cases detail struggles faced by parents which include

[1]Even though this case involves a termination petition, the treatment of a parent's anonymity in Division One does not differ based on whether it is a termination or dependency case. *See* RAP 18.13A.

poverty, substance abuse and mental health diagnoses, sexual abuse from family members, intimate partner violence, and many other challenges. *See generally* Diane DePanfilis. *Child Neglect: A Guide for Prevention, Assessment and Intervention*, U.S. Dept. of Health & Hum. Servs., Admin. for Child. & Fams., Child.'s Bureau, Off. on Child Abuse and Neglect (2006), 11-14. Children's struggles are also described. Beyond the allegations of abuse and neglect, which in and of themselves can include humiliating details, these records also frequently include the regression of children in academics and behavioral milestones, impacts to mental health and development, and other sensitive information.[2]

Division One's practice of using the parent's full name in appellate records will disclose this sensitive information to the broad public, which could have devastating consequences for the families involved. *See* Tony Calero, *Open Juvenile Records in Washington State: Process, Effects, and Costs of Protective Mechanisms*, 13 (2013)(unpublished M.P.A. thesis,

[2] *See generally* Jeanette M. Scheid, MD, PhD. Children in Foster Care: Issues and Concerns. 33 Psychiatric Times, no. 6 (June 2016), https://www.psychiatrictimes.com/view/children-foster-care-issues-and-concerns); *E.g., In re Dependency of J.A.F.*, 168 Wn. App. 653, 657, 278 P.3d 673, 676 (2012) (details of the children's experience of "bedwetting" and "mental health issues" due to the maltreatment they faced); *In re Dependency of A.M.*, 192 Wn. App. 1008, 1011 (2016) (citing testimony that children exposed to domestic violence will have regression such as failure to thrive for infants; bedwetting for preschoolers; "hitting, biting, fearful of returning home, hiding at school and/or in the home, not making educational or academic progress" for middle school children).

University of Washington)
(https://www.juvjustice.org/sites/default/files/ckfinder/files/Examining%20Open%20Juvenile%20Records%20in%20Washington%20State.pdf).

The concern has never been more urgent than in the current age of free online research tools and digitized records at the fingertips of anyone. This information is at risk to be misused by employers, landlords, abusive intimate partners, bullies at school, and anyone else. Division One's repeated violations of parents' and children's expectations of privacy in these sensitive proceedings is particularly alarming because it lacks any legal basis – neither state law nor article 1, section 10 of Washington's constitution requires such a disclosure. As such, this Court should reverse the decision below.

B. The appellate court practice of using full names of parents in case titles and written opinions produces long-term negative effects on parents and children in these cases.

1. Division One's practice impedes parents' ability to secure employment and housing placing them at further risk of system involvement.

Background check services are now a multi-billion-dollar industry that provide the housing and employment sectors with information about prospective employees and tenants. Ariel Nelson, *Broken Records Redux: How Errors By Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* 7 (2019),

https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf ("An industry analysis estimated that 1,954 background screening companies existed in 2019."). Currently, most employers and landlords report utilizing consumer reporting companies to get background information on prospective employees and tenants. *See* Kimani Paul-Emile, *Beyond Title VII: Rethinking Race, Ex-Offender Status, and Employment Discrimination in the Information Age,* 100 Va. L. Rev. 893, 894-95 (2014); c*f.* Rourke L. O Brien and Barbara Kiviat, *Disparate Impact? Race, Sex, and Credit Reports in Hiring*, Socius, 1 (2018), https://journals-sagepub-com.proxy.seattleu.edu/doi/pdf/10.1177/2378023118770069 (estimating 92 percent of employers in 2010 inquired into the criminal backgrounds of prospective hires).

Beyond criminal and financial information, civil court records are routinely included in reports used by employers and landlords, even though the Fair Credit Reporting Act (FCRA) protects some civil litigation records, like the official juvenile dependency court file. *See* RCW 19.182.040 (1)(f)(limiting public access to some dependency and termination court records).

Given the sensitive nature of the information in dependency and termination cases, Division One's practice of disclosing the names of involved parents may exacerbate adverse treatment that families already

experience at the hands of potential employers and landlords. For example, research suggests the increase of information available to landlords, including civil litigation records, increases the grounds for rejecting applicants in a competitive market.[3] S*ee* Eric Dunn and Marina Grabchuk, *Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State*, 9 Seattle J. for Soc. Just. 319, 337 (2010).

Alarmingly, failure to secure proper housing and employment may also perpetuate families' involvement in the dependency court system, as environmental factors such as residence in unsafe neighborhoods and homelessness are linked to involvement with child protection agencies.[4] Researchers have identified a strong correlation between poverty and dependency actions, indicating that employment and housing barriers will only serve to aggravate the situation for parents and children in dependency court system.[5]. Increased data tracking by landlords and

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[3] Property owners often assess "behavioral suitability" seeking the "good tenant." Eric Dunn, Marina Grabchuk, *Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State*, 9 Seattle J. for Soc. Just. 319, 322 (2010). Most landlords contract with tenant-screening services to prepare custom "tenant-screening reports," while others research public websites and databases. *Id.,* at 320. These reports cover "various background reports such as civil litigation records, criminal histories, and credit scores." *Id.,* at 323.

[4] DePanfilis, *supra*, at 13-14 (discussion of environmental neglect).

[5] *Accord* DePanfilis, *supra*, at 13-14 ; Claudia J. Coulton, et al., *How neighborhoods influence child maltreatment: A review of the literature and alternative pathways*, 31 Child Abuse & Neglect, no. 11 (Nov-Dec 2007) 1117-

employers researching prospective tenants and employees, combined with access to appellate court opinions, place parents and children in these cases at further risk of unfair treatment when seeking employment and housing.[6] The Court should not adopt a practice that would make it more difficult for families touched by this system to achieve economic independence and a stable living environment.

Even for parents who are able to successfully rehabilitate after their dependency court involvement and reunite with their children, the existence of court records detailing sensitive information about their lives may unduly impact their economic opportunities. Currently, the Department of Children, Youth, and Families (DCYF) allows rehabilitated parents to earn a Certificate of Parental Improvement (CPI). If the parent demonstrates that they have the "character, suitability, and competence to care for children and meet[] the other requirements," they receive a CPI. *See* RCW 74.13.720 (3); *see also* Wa. State Dep't of Child., Youth & Fams., Certificate of Parental Improvement (CPI), https://www.dcyf.wa.gov/safety/can-founded-findings/cpi. However, the

1142; Michele Estrin Gilman, *The Poverty Defense*, 47 U. Rich. L. Rev. 495, 514 (2013) ("Homelessness and receipt of public benefits such as welfare and Medicaid are also strongly associated with involvement in the child welfare system.").

[6] *Cf.* 2015 Washington State Civil Legal Needs Study Update, 14 (23 percent of respondents reported unfair treatment due to credit history, 10 percent reported unfair treatment due to juvenile or criminal records).

CPI only provides parents with opportunity to present the DCYF-issued document attesting that the applicant has rehabilitated, an opportunity that may never arise if their application for a job or for housing is screened out of consideration on the basis of an existing appellate opinion. Thus, the availability of case details through appellate opinions and case titles presents a direct and negative consequence for parent-applicants, even for parents DCYF considers rehabilitated.

2. Division One's practice may also impact parents in future family law proceedings.

Parents, who experienced termination of child-parent relationships when they were young, can and do successfully parent other children later in life. While a parent's previous involvement in dependency or termination does not, in and of itself, limit their residential time or decision making under RCW 26.09.191, readily accessible details from a dependency or termination appellate opinions could do considerable damage within the family law process for subsequent children.

First, the existence of readily available, sensitive information about a litigant in family court may encourage them to settle for a less favorable parenting agreement when they may have otherwise chosen to go to trial and pursue less restrictions and more family or residential time with their

children. Most litigants navigating family law courts are *pro se*,[7] and do not take their cases to trial.[8] Within this landscape, parents confronted with an unsavory old public record obtained by the opposing party through a simple Google search may settle for less time than they otherwise would out of fear that the court's opinion would be tainted by their old records.

Second, for parents who do contest their family law cases, many start out at a family law motions calendar to obtain temporary orders deciding where the child will primarily reside before trial. Across the state, these motions have strict page limits and are accompanied by hearings where each party is given roughly five minutes to present their case and respond to accusations from the other party.[9] With limited information, the introduction of an appellate court opinion with highly

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[7] At least 76 percent of low-income people with legal problems do not get the help they need. *See* 2015 Washington State Civil Legal Needs Study Update, 15. *See also* Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. Pub. L.373, 376 (2005) ("The number of unrepresented litigants in [domestic-relations] cases has surged nationwide, especially in family law cases.").

[8] Leslie Feitz, *Pro Se Litigants in Domestic Relations Cases*, 21 J. Am. Acad. Matrim. Law. 193, 196-97 (2008) ("[p]ro se litigants are less likely than attorneys to request continuances, and are less likely to have hearings or trials").

[9] *See* KCLFLR 6 (e)(5)(family law declarations and supporting exhibits limited to 25 pages); KCLFLR 6(f)(1) (each party generally given five minutes for argument); PCLSPR 94.04 (c)(5)(A) (entirety of declarations and affidavits generally limited to 20 pages); PCLSPR 94.04 (c)(9)(the court may set strict limits on the time for argument); YCSCLR 94.04W(A)(2)(a)(iv)(the entirety of all declarations and affidavits generally limited to 20 pages); YCSCLR 94.04W(A)(2)(a)(iv), (A)(2)(f)(arguments generally limited to five minutes per side); CCLCR 4.1(d)("All temporary hearings shall be heard only on affidavit unless otherwise ordered by the court" and supporting affidavits generally limited to four per party; affidavits from parties shall not exceed six pages).

sensitive information carries significantly more weight at motion hearings than it might at trial. Because of time constraints and page limits many *pro se* parent-litigants will be hampered to respond and potentially harmed by restrictive court rulings regarding custody and family time.[10]

Indeed, parents with criminal records litigating in family court already experience opposing parties using these opinions as evidence in this way, suggesting that appellate decisions containing the full names of parents in dependency and termination proceedings may be used in the same way. *See* Jesse Krohn & Jamie Gullen, *Mothers in the Margins: Addressing the Consequences of Criminal Records for Young Mothers of Color*, 46 U. Balt. L. Rev. 237, 257 – 272 (2017). The children of these proceedings also face potential ramifications from their involvement in a dependency or termination case if they go on to become parents and are involved in family law court. Specifically, RCW 26.09.191 allows courts to limit a parent's residential time with a child if the court finds the parent has a long-term emotional impairment which interferes with the performance of parenting functions. RCW 26.09.191(3)(b).

[10]*Amicus*, NJP, has observed that the practical reality for many parents is that a loss at a temporary orders hearing can be viewed as a sign that they do not have a strong case for trial, and can be a strong motivator for settlement. And, because the quick process for temporary orders was only ever intended to be temporary pending an actual trial, parents become so discouraged, trial never happens.

Again, for parents who do contest their family law cases, many start out at a family law motions calendar to obtain temporary orders deciding where the child will primarily reside before trial. Currently, litigants introduce information related to the other parent's childhood trauma as evidence of a person's emotional instability. If this practice is bolstered by the availability of highly sensitive and otherwise privileged information in court opinions detailing a parent's childhood trauma and the effects of that trauma, the potential for negative legal findings and outcomes is great. Because family law judges have tremendous discretion, records of a parent's childhood trauma in dependency or termination proceedings may unduly influence a court to limit the rights of an otherwise fit parent.

3. Without anonymity, some parents may be discouraged from seeking review of legal errors.

Parents receive only one opportunity to defend against the merits of the petition either at the fact finding on the dependency petition or at the trial hearing on the termination petition. *See* RCW 13.34.110; *In re Welfare of A.B.*, 168 Wn.2d 908, 921, 232 P.3d 1104, 1111 (2010), *as amended* (Sept. 16, 2010). When a parent is unsuccessful at having the petition dismissed at the trial or fact-finding hearing, they can seek

appellate review as a matter of right.[11] *See In Re Dependency of Chubb*, 112 Wn.2d 719, 721-22, 773 P.3d 851, 853 (1989); RAP 2.2 (a)(5), (a)(6). However, in Division One, under the current practice, parents categorically lose their anonymity for exercising this right.

Amici have grave concerns about requiring a loss of anonymity to gain appellate review. The need for appellate review cannot be overstated, as so few cases are able to defeat challenges for mootness and the magnitude of the decisions on the child's well-being and the parent's legal outcomes are enormous. With just one primary opportunity to contest the merits of the claims, appellate procedure should not erect long-lasting deterrents from seeking review of that decision.

Some parents may have been wrongly or rightly accused of child abuse or neglect, and yet will still be reunified with their children. [12] Regardless of the potential merits of a parent's appeal, they will be dissuaded from pursuing reunification with their children by the threat of having sensitive information about themselves and their families

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[11] The procedure for review is the same for parents appealing from a dispositional dependency decision as it is for parents appealing from a decision terminating a parent-child relationship. *See* RAP 18.13A(a).

[12] Washington State Center for Court Research, Exhibit 21 of *Dependent Children in Washington State: Case Timeliness and Outcomes 2019 Annual Report*, 21(2019), https://www.courts.wa.gov/subsite/wsccr/docs/2019DTR.pdf ("Of the dependent children who had an associated termination case or who were due for a termination case in 2019, 53 percent had a termination petition within 15 months of out-of-home care[.]").

permanently preserved in public court records.

4. The burdens of the Division One's practice are disproportionately borne by Black and Native American parents and children.

Black and Native American families have historically been disproportionately involved in the child welfare system in comparison to their white counterparts.[13] In DCYF's most recent report, data indicates Black and Native American children are over 1.5 times more likely to be referred to CPS, to have their referral "screened-in" for investigation,[14] and to be removed from their homes once referred. *See* J. Christopher Graham, *2019 Washington State Child Welfare Racial Disparity Indices Report*, Dept. of Children, Youth, and Families, 2-4 (2020),

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[13] In 2007, the Washington State Racial Disproportionality Committee found that Black and Native American children were more likely than their white peers to be referred to Child Protective Services (CPS); removed from their homes once referred; and remain in foster care once removed. While the study found that Black and Native American children were, respectively, slightly less likely and as likely to have dependency cases filed in court as white children once removed from the home, their overrepresentation at previous steps in the child welfare process indicated that they constituted a disproportionate number of these cases. Marna Miller, *Racial Disproportionality in Washington's Child Welfare System,* Wash. St. Inst. for Public Policy, 29 (2008), http://www.wsipp.wa.gov/ReportFile/1018/Wsipp_Racial-Disproportionality-in-Washington-States-Child-Welfare-System_Full-Report.pdf.

[14] *See Policy 2200 Intake Process and Response* in Policies & Procedures, Dep't of Child., Youth, & Fams. (July 1, 2019), https://www.dcyf.wa.gov/practices-and-procedures/2200-intake-process-and-response (after screen-in DCYF required to investigate within 24 hours and determine whether allegations are Unfounded, Founded, or Risk Only); *See Policy 2332 Child Protective Services Family Assessment Response* in Policies & Procedures, Dep't of Child., Youth, & Fams. (July 1, 2019), https://www.dcyf.wa.gov/policies-and-procedures/2332-child-protective-services-family-assessment-response (describing process for referral to voluntary services vs. filing of court action).

https://www.dcyf.wa.gov/sites/default/files/pdf/reports/CWRacialDisparityIndices2019.pdf. Data further indicates that Black and Native American children are twice as likely as white children to be placed away from family into foster care within a year of intake. *Id.* This data demonstrates ongoing disparity.

For many people in Washington, past involvement with the courts negatively impacts their ability to secure housing, get a job, and otherwise take care of their financial needs. *See 2015 Washington State Civil Legal Needs Study Update*, Civil Legal Needs Study Update Comm., Wa. State Supreme Court, 14 (2015), https://cob.org/wp-content/uploads/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf. Among this group, Black and Native American individuals were significantly more likely to report unfair treatment based on their credit history than the general low-income population. *Id.* Similarly, while one in ten low income individuals surveyed stated that they had been discriminated against based on their adult or juvenile criminal history, Black and Native American respondents were three times more likely than white respondents to report unfair treatment on this basis. [15] *Id.* Given

[15] *See also* Task Force On Race and the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System*, 35 Seattle U. L. Rev. 623, 636-638 (2012), https://digitalcommons.law.seattleu.edu/sulr/vol35/iss3/3/ (noting racial

that increased access to court records may thus exacerbate existing racial economic and social disparities, this Court should preserve anonymity and protect the confidentiality of families.

C. The anonymity of parents and children should be preserved in the appellate courts.

1. State law and court rules require information, like the names of parents and children, be kept confidential, unless parents or children make a motion for release.

Neither state law or court rules provide for the unilateral release of any termination and dependency information to the general public, as they require a motion and notice to a limited group of people. *See* RCW 13.50.100 (2), (5), (7), (8), (9), (10); RCW 13.50.010 (1)(b); GR 15 (e)(4), (g); RAP 3.4. However, there is no articulated legal standard for when the court may include the names of parents or children in appellate court a case title or appellate court opinions of termination and dependency cases. *See* RAP 3.4; GR 15 (e), (g).

2. Any apparent conflict between the dependency statutes and appellate court rules should be harmonized to give effect to both.

RAP 3.4 appears to be inconsistent with GR 15 (e) and RCW 13.50.100 and RCW 13.50.010 as it purports to allow the challenged court

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disparities in the justice system are attributable to structural racial bias and not racial differences in crime commission rates).

practice here, to wit: the exposure of a parent's full name and, by extension, the identity of the child(ren) within the court's case title and written opinion. While the Legislature has been recognized as having "authority to intrude on a family's autonomy" and to use its *parens patriae* power and police power "to act to protect children lacking the guidance and protection of fit parents of their own[,]" *In re Custody of Smith*, 137 Wn.2d 1, 16, 969 P.2d 21, 28 (1998), *aff'd sub nom*. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000), the Supreme Court has the inherent power to adopt procedural rules necessary to the operation of the courts. *State v. Edwards*, 94 Wn.2d 208, 212, 616 P.2d 620 (1980). When there is an apparent conflict between procedural statutes and court rules, "[a]ll provisions should be harmonized whenever possible, and an interpretation which gives effect to both provisions is the preferred interpretation." *Emwright v. King County*, 96 Wn.2d 538, 543, 637 P.2d 656, 659 (1981).

Amici suggest this Court should harmonize RAP 3.4 with the general rules about use of sealed records on appeal and with the dependency records sealing statute. When harmonizing statutes, the court may also consider that there are explicit protections for the names of parents and children in the dependency records sealing statute and that RAP 3.4 also explicitly protects the names of children in *juvenile offense*

proceedings, even though that provision is not applicable here. *Cf.* RAP 3.4 (requiring use of child's initials in appellate case titles and appellate briefing in juvenile offense proceedings). *Amici* further strongly urge this Court to do the following:

- Protect, at a minimum, the names of parents and children involved in these proceedings, and require pre-disclosure motion hearing to do otherwise;[16]
- Limit the category of people, who may seek to release the full names of the parents or children, to the same small group outlined in the general rules and the dependency statutes; i.e. the child, the child's parent(s), or a person, who is subject of the records or information;[17] and
- Provide for consideration of whether a parent is consenting to or requesting release of his own or her own full names as contemplated in the dependency records sealing statute.[18]

D. Open court principles are <u>not</u> violated when anonymity is preserved for parents and children in termination and dependency proceedings.

Article I, section 10 of the Washington Constitution states that "justice in all cases shall be administered openly." Const. art. I, § 10. Open court principles are typically concerned with actions that seek to seal a court proceeding from public purview rather than actions to keep sealed information from being released as was done here in Division One. While the doctrine provides appellate courts with the discretion to deny a motion

[16] *See* RCW 13.50.100 (8), (9), (10); RCW 13.50.010 (5), (7).
[17] *Id.,* footnote 16*, supra.*
[18] RCW 13.50.010 (10).

to redact, it also encourages the use of initials in court records for matters where children are involved.

1. Article I, section 10 does not apply to juvenile dependency proceedings.

The steps in determining whether the public trial right is implicated or violated are: "(1) Does the proceeding at issue implicate the public trial right? (2) If so, was the proceeding closed? And (3) if so, was the closure justified[.]" *State v. Smith*, 181 Wn.2d 508, 521, 334 P.3d 1049, 1056 (2014). The experience and logic tests are used to determine whether the issue implicates the public trial right. *Id*. at 514-520. The experience prong of the test asks "whether the place and process have historically been open to the press and general public." *Id*. at 514 . Historically, while "the openness of juvenile court records has evolved over time…there are consistent themes showing that article I, section 10…do[es] not apply."[19] *State v. S.J.C.,* 183 Wn.2d 408, 417, 352 P.3d 749 (2015). Even when the Washington Legislature gave the general public the right to attend juvenile dependency hearings in 2003, it provided a mechanism for the court to

[19] Washington has a long history of protecting the privacy of children in juvenile court proceedings. *See* 1913 Wash. Laws ch. 160 (1913) (establishing that Washington has had a juvenile court system since 1913). In 1961 the Washington Legislature closed both juvenile delinquency and dependency proceedings to the public. 1961 Wash. Laws ch. 302 sect. 5 (1961). For decades it was generally accepted in Washington that the need to protect children outweighed the public's interest in attending dependency proceedings.

close the hearings, and still prohibited the general public from accessing video recordings of those hearings and from broadcasting or televising juvenile dependency hearings. *See* RCW 13.34.115 (1), (5). The Legislature further remained steadfast in keeping the written records, even those filed for use at the public hearings, sealed. *See* RCW 13.50.100.

The logic prong of the test asks, "whether public access plays a significant positive role in the functioning of the particular process in question." *Id*. at 514. Because, in juvenile court, there is a valid distinction between court proceedings and court records, the public's access to the full names and identities of parents does not play a significant positive role in the functioning of dependency and termination proceedings. *S.J.C*, 183 Wn.2d at 430- 431. While open proceedings can serve "to ensure a fair trial," among other things, for an accused person, the sealing of records "promote[s] the rehabilitative purpose of the juvenile justice system." *See id*. at 431; *Matter of Dependency of E.H.,* 191 Wn.2d 872, 896–98, 427 P.3d 587, 598 (2018), *abrogating In Re the Dependency of J.B.S.*, 122 Wn.2d 131, 137-38, 856 P.2d 694 (1993).

2. Even if the appellate court believed a public trial right was implicated, it committed obvious error by not issuing written findings.

If Division One believed a public trial right was at stake, an analysis should have been included in the opinion when it summarily

denied the parent's motion to preserve her anonymity. The inquiry surrounds two questions: was there a closure; and if so, was that closure justified. *State v. Lormor*, 172 Wn.2d 85, 93, 257 P.3d 624 (2011) (closure occurs "when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave"). Even if the court believed that the use of the parent's full names was akin to closing the courtroom to the public, it should have employed an in-depth, five-factor test as to whether the closure was justified before denying the mother's motion. [20] *See Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 37–39, 640 P.2d 716 (1982); *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 211, 848 P.2d 1258, 1261 (1993)("This right of access is not absolute, however, and may be outweighed on a case-by-case basis according to the *Ishikawa*

[20] Under *Ishikawa* before courts order restrictions on access to criminal hearings or the records from criminal hearings, five requirements must be met:

> (1) the proponent of closure must make a showing of the need for a closure and, when closure is sought based on an interest other than the right to a fair trial, a serious and imminent threat to that interest must be shown;
> (2) anyone present when the closure motion is made must be given an opportunity to object to the closure;
> (3) the court, the proponents of, and the objectors to the closure should analyze whether the proposed method for curtailing open access would be the least restrictive means available and effective in protecting the threatened interests;
> (4) the court must weigh the competing interests of the defendant and the public;
> (5) the order must be no broader in its application or duration than necessary to serve its purpose.

Ishikawa, 97 Wn.2d at 37–39.

guidelines."). Additionally, the court should have entered specific findings showing that there was no justification for a closure order. *State v. Bone–Club*, 128 Wn.2d 254, 260, 906 P.2d 325 (1995). Because Division One unilaterally released the mother's full name without stating its reasons and then summarily denied her request not to do so, both decisions should be reversed. *Id*. at 260.

E. CONCLUSION

For the foregoing reasons, *Amici* urge this Court to reverse both the decision to deny mother's motion and the decision to unilaterally release the mother's full name in the case title and court opinion.

DATED: March 29, 2021

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V. APPENDICES

Statutes

Rules

RCW 13.34.110

Hearings—Fact-finding and disposition—Time and place, notice. *(Effective until January 1, 2021.)*

(1) The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor. The rules of evidence shall apply at the fact-finding hearing and the parent, guardian, or legal custodian of the child shall have all of the rights provided in RCW 13.34.090(1). The petitioner shall have the burden of establishing by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030.

RCW 13.34.115

Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings.

(1) All hearings shall be public, and conducted at any time or place within the limits of the county, except if the judge finds that excluding the public is in the best interests of the child.

(2) Either parent, or the child's attorney or guardian ad litem, may move to close a hearing at any time. If the judge finds that it is in the best interests of the child the court shall exclude the public.

(3) If the public is excluded from the hearing, the following people may attend the closed hearing unless the judge finds it is not in the best interests of the child:

(a) The child's relatives;

(b) The child's foster parents if the child resides in foster care; and

(c) Any person requested by the parent.

(4) Stenographic notes or any device which accurately records the proceedings may be required as provided in other civil cases pursuant to RCW 2.32.200.

(5) Any video recording of the proceedings may be released pursuant to RCW 13.50.100, however, the video recording may not be televised, broadcast, or further disseminated to the public.

[2003 c 228 § 1; 2000 c 122 § 12.]

RCW 13.50.010

Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access—Confidential child welfare records.

(1) For purposes of this chapter:

(b) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the oversight board for children, youth, and families, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, the department of children, youth, and families and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

RCW 13.50.100

Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited. *(Effective until January 1, 2021.)*

(1) This section governs records not covered by RCW 13.50.050, 13.50.260, and 13.50.270.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(5) Any disclosure of records or information by the department of social and health services or the department of children, youth, and families, pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(7) A juvenile, his or her parents, the juvenile's attorney, and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of children, youth, and families or the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(8) A juvenile or his or her parent denied access to any records following an agency determination under subsection (7) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsection (7)(a) and (b) of this section.

(9) The person making a motion under subsection (8) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(10) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (7) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

RCW 19.182.040

Consumer report—Prohibited information—Exceptions.

(1) Except as authorized under subsection (2) of this section, no consumer reporting agency may make a consumer report containing any of the following items of information:

(f) Juvenile records, as defined in *RCW 13.50.010(1)(c), when the subject of the records is twenty-one years of age or older at the time of the report; and

RCW 26.09.191

Restrictions in temporary or permanent parenting plans. *(Effective until January 1, 2021.)*

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

RCW 74.13.720

Certificates of parental improvement—Issuance—Standards—Rules—Liability. *(Effective January 1, 2021.)*

(3) The secretary shall issue a certificate of parental improvement if, on a more probable than not basis, the requestor has the character, suitability, and competence to care for children and meets the other requirements of this section.

RAP 2.2
DECISIONS OF THE SUPERIOR COURT THAT MAY BE APPEALED

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(5) Juvenile Court Disposition. The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.

(6) Termination of All Parental Rights. A decision depriving a person of all parental rights with respect to a child.

RAP 3.4
TITLE OF CASE AND DESIGNATION OF PARTIES

The title of a case in the appellate court is the same as in the trial court except that the party seeking review by appeal is called an "appellant," the party seeking review by discretionary review is called a "petitioner," and an adverse party on review is called a "respondent."

Upon motion of a party or on the court's own motion, and after notice to the parties, the Supreme Court or the Court of Appeals may change the title of a case by order in said case. In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by his or her initials throughout all briefing and pleadings filed in the appellate court, and shall refer to any related individuals in such a way as to not disclose the juvenile's identity. However, the trial court record need not be redacted to eliminate references to the juvenile's identity.

[Adopted effective July 1, 1976; Amended effective September 1, 2005; September 1, 2018.]

RAP 18.13A
ACCELERATED REVIEW OF JUVENILE DEPENDENCY DISPOSITION ORDERS, ORDERS TERMINATING PARENTAL RIGHTS, DEPENDENCY GUARDIANSHIP ORDERS, AND ORDERS ENTERED IN DEPENDENCY AND DEPENDENCY GUARDIANSHIP CASES

(a) Generally. Juvenile dependency disposition orders and orders terminating parental rights under chapter 13.34 RCW, dependency guardianship orders under chapter 13.36 RCW, and interim orders entered in dependency and dependency guardianship cases when discretionary review has been granted, may be reviewed by a commissioner on the merits by accelerated review as provided in this rule. Review from other orders entered in juvenile dependency and termination actions are not subject to this rule. The provisions of this rule supersede all other provisions of the Rules of Appellate Procedure to the contrary, and this rule shall be construed so that appeals from juvenile dependency disposition orders and orders terminating parental rights under chapter 13.34 RCW, dependency guardianship orders under chapter 13.36 RCW, and interim orders entered in dependency and dependency guardianship cases when discretionary review has been granted shall be heard as expeditiously as possible.

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16).

(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

CLARK COUNTY LOCAL CIVIL RULES

CIVIL RULES - LCR

RULE 4.1 DISSOLUTION OF MARRIAGE, MODIFICATIONS, ETC.

(d) Scope of Hearings. A show cause order or citation may include notice of hearing all relief sought by the applicant. All temporary hearings shall be heard only on affidavit unless otherwise ordered by the court. Supporting affidavits shall be limited to 4 per party excluding affidavits from expert witnesses. Affidavits from parties shall not exceed 6 pages and supplemental affidavits shall not exceed 2 pages. All affidavits and declarations shall be typewritten and double spaced and no smaller than eleven point type. [Amended effective September 1, 2014]

LFLR 6. FAMILY LAW MOTIONS CALENDAR PROCEDURES

(e) ***Limitations on Declarations.***

(5) Page limits.

(A) Generally. Absent prior authorization from the court, the entirety of all declarations and affidavits from the parties and any non-expert witnesses in support of motions (except financial declarations), including any reply, shall be limited to a sum total of twenty-five (25) pages. The entirety of all declarations and affidavits submitted in response to motions shall be limited to a sum total of twenty (20) pages.

(B) Exhibits. Exhibits that consist of declarations or affidavits of parties or witnesses shall count towards the above page limit. All other exhibits attached to a declaration or affidavit shall not be counted toward the page limit.

(C) Financial Declarations. Financial Declarations and financial documents, as specified in LFLR 10, do not count toward the page limit.

(D) Expert Reports and Evaluations. Declarations, affidavits, and reports from Court Appointed Special Advocates (CASA), Family Court Services (FCS) and expert witnesses do not count toward the page limit.

(E) Miscellaneous Exceptions. Copies of declarations or affidavits previously filed for a motion already ruled upon and supplied only as a convenience to the court in lieu of the court file do not count toward the page limit. Deposition excerpts shall not count toward the page limit.

(f) ***Time for Argument.***

(1) Each side is allowed five (5) minutes for oral argument, including rebuttal, unless otherwise authorized by the court.

PCLSPR 94.04 FAMILY LAW PROCEEDINGS

(c) Family Law Motions.

(5) Page Limits

(A) Generally. Absent prior authorization from the court, the entirety of all declarations and affidavits from the parties and any non-expert witness in support of motions (except financial declarations), including any reply, shall be limited to a sum total of 20 pages for all motions scheduled for the same date. Prior authorization to exceed page limits under **PCLSPR 94.04(c)(5)** shall initially be presented to the Ex Parte Division and that Division shall determine whether the matter needs to be referred to the assigned Commissioner. The entirety of all declarations and affidavits submitted in response to motions shall be limited to a sum total of 20 pages for all motions scheduled for the same date. In those cases having more than one moving party, the entirety of all declarations and affidavits from each party in support of their respective motions (except financial declarations), shall be limited to a sum total of 20 pages per side.

YAKIMA COUNTY SUPERIOR COURT

RULE 94.04W

FAMILY LAW PROCEEDINGS

(A) PROCEEDINGS PENDING TRIAL

(2) Motions. Any party may file a motion pending trial, including motions for temporary orders, to compel discovery, to appoint a GAL/FCI, or presentation of final or temporary orders.

(a) **Form of pleadings, basis and limitations.**

(iv) **Page Limitations**. Absent prior authorization of the presiding family court commissioner or a different judicial officer if the commissioner is not available, the entirety of all declarations and affidavits from the parties and non-expert witnesses in support of motions (except financial declarations, financial documents and sealed source documents), shall be limited to a sum total of twenty (20) pages.

The entirety of all declarations and affidavits submitted in response to motions shall not exceed twenty (20) pages.

The entirety of all declarations and affidavits submitted in reply to the response shall not exceed ten (10).

Exhibits to any declarations shall count toward the above page limits.

Declarations, affidavits and reports from the Family Court Investigator, GAL, CPS or law enforcement shall not count toward the page limit. Declarations in support of Parenting Plans shall not count toward the page limit but shall not exceed three (3) pages.

(f) Hearings on Temporary Motions. All motions shall be determined on sworn declarations unless the court determines that testimony is necessary. Argument on temporary motions shall be limited to five minutes per side, except that the court may in its discretion increase or reduce the time for argument. Argument shall be limited to matters contained in the record. By agreement of the parties or order of the court, the matter may be submitted solely on the record.

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on March 29, 2021, the foregoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 29th day of March, 2021.

/s/ D'Adre Cunningham
D'Adre Cunningham
Attorney for Amicus Curiae
WASHINGTON DEFENDER ASSOCIATION

WASHINGTON DEFENDER ASSOCIATION

March 29, 2021 - 2:28 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98965-6
Appellate Court Case Title:	In Re the Welfare of K.D.
Superior Court Case Number:	18-7-01295-0

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